

## 7. CONFIDENTIALITY PROVISIONS

- 7.1 Subject to 42 U.S.C. 1396r-8(b)(3)(D), other relevant federal and state laws, and the parties agreement herein, the parties agree that this Agreement and all information provided pursuant to this Agreement will not be disclosed and that the parties will not duplicate or use the information, except in connection with this Agreement or as may be required by judicial order. The parties further agree that any information provided by Manufacturer to the State, the Division or any agent of either party pursuant to this Agreement and this Agreement itself constitute confidential commercial and financial information not subject to public disclosure. Furthermore, all pricing and other confidential information will not be released to any person or entity not a party or agent of a party to this Agreement. Confidential information, including but not limited to trade secrets, Best Price information, Net Cost information, AMP, other pricing information, utilization data and this Agreement itself will not be disclosed, or used except in connection with this Agreement or as may be required by statute, regulation, or judicial order. In the event an attempt is made to compel either party to divulge confidential and/or proprietary information related to this Agreement, said party shall notify the other party to this Agreement in a prompt manner to allow the other party to seek injunctive or other relief prohibiting the disclosure of such information.
- 7.2 The Manufacturer will hold the State Utilization Data confidential. If the Manufacturer audits this information or receives further information on such data, that information shall also be held confidential. The Manufacturer shall have the right to disclose State Utilization Data to auditors who must agree to keep such information confidential.
- 7.3 Notwithstanding the non-renewal or termination of this Agreement for any reason, these confidentiality provisions will remain in full force and effect.

## 8 NON-RENEWAL or TERMINATION

- 8.1 This Agreement shall be effective the 1<sup>st</sup> day of May, 2004, and shall have the fourteen (14) month term indicated in Section 4.3, *supra*. This Agreement shall automatically renew for additional one year terms unless one party hereto provides the other, on or before ninety (90) days prior to the then current expiration date of this Agreement, written notice of said party's intent not to renew this Agreement. Nothing contained herein shall prevent Manufacturer and State from mutually agreeing to the amending of this Agreement to increase the Supplemental Rebates and/or add additional Supplemental Covered Products to this Agreement.
- 8.2 Notwithstanding any non-renewal or termination of this Agreement, Supplemental Rebates shall continue to be due and payable from the Manufacturer under Section 4.2 for any Supplemental Covered Product(s) utilization for which the Division's obligation to reimburse arose prior to the effective date of termination of this Agreement.
- 8.3 Notwithstanding any other provision to the contrary, either party may terminate this Agreement at any time by providing the other party with no less than ninety (90) days advance written notice.
- 8.4 In the event CMS, a court of competent jurisdiction, or any other legislative or regulatory body with appropriate jurisdiction determines that the Supplemental Rebates provided for herein are illegal or affect Manufacturer's Best Price, Manufacturer may cancel this Agreement immediately by providing the Division with written notice. Said notice shall cite this section of the Agreement and shall include an appropriate reference to the ruling, statute or decision that forms the basis of Manufacturer's right to terminate under this section.

9 GENERAL PROVISIONS

9.1 This Agreement will be construed and interpreted in accordance with the laws of the State of Missouri and 42 U.S.C. §1396r-8.

9.2 Any notice required to be given pursuant to the terms and provisions of this Agreement will be in writing and will be sent by certified mail, return receipt requested or via overnight courier. Notice to the Division will be sent to:

Attn: George Oestreich, Pharm.D.  
P.O. Box 6500  
2023 St. Mary's Boulevard  
Jefferson City, MO 65109

9.3 Notice to Manufacturer will be sent to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Name)  
(Title)  
(Company Name)  
(Address)

- 9.4 Nothing herein shall be construed or interpreted as limiting or otherwise affecting the State's or Manufacturer's ability to pursue its rights arising out of the terms and conditions of the Agreement in the event that a dispute between the parties is not otherwise resolved. Proper venue and jurisdiction for any legal action relating to this Agreement shall be in the Circuit Court of Cole County Missouri.
- 9.5 Manufacturer and the agents and employees of Manufacturer in the performance of this Agreement, will act in an independent capacity and not as officers, employees or agents of the State.
- 9.6 Manufacturer may not assign this Agreement, either in whole or in part, without the written consent of the Division except as provided for in Section 4.7. However, in the event of a transfer in ownership of the Manufacturer, the Agreement is automatically assigned to the new owner, subject to the terms and conditions of this Agreement. If the Agreement is assigned pursuant to this Section, Manufacturer shall provide the Division with an update of the information contained in Section 9.3, supra.
- 9.7 Nothing in this Agreement will be construed so as to require the commission of any act contrary to law. If any provision of this Agreement is found to be invalid or illegal by a court of law, or inconsistent with federal or state requirements, this Agreement will be construed in all respects as if any invalid, unenforceable, or inconsistent provision were eliminated, and without any effect on any other provision. The parties agree to negotiate replacement provisions, to afford the parties as much of the benefit of their original bargain as is possible.
- 9.8 The Division and Manufacturer declare that this Agreement, including attachments and Addenda/Addendum, contains a total integration of all rights and obligations of both parties. There are no extrinsic conditions, collateral agreements or undertakings of any kind. In regarding this Agreement as the full and final expression of their contract, it is the express intention of both parties that any and all prior or contemporaneous agreements, promises, negotiations or representations, either oral or written, relating to the subject matter and period of time governed by this Agreement which are not expressly set forth herein are to have no force, effect, or legal consequences of any kind.
- 9.9 This Agreement will not be altered except by an amendment in writing signed by both

parties and authorized by CMS. No individual is authorized to alter or vary the terms or make any representation or inducement relative to it, unless the alteration appears by way of a written amendment, signed by duly appointed representatives of the Division and Manufacturer.

- 9.10 Neither party contemplates any circumstances under which indemnification of the other party would arise. Nevertheless, should such circumstances arise, Manufacturer agrees to indemnify, defend and hold harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Manufacturer's negligent or willful misconduct in the performance of this Agreement. State must provide Manufacturer with prompt written notice of any claim or action alleging such liability and State must cooperate fully in the defense of such claim or action. Manufacturer is authorized to manage and defend such claim or action and no such claim or action may be compromised or settled without the prior written approval of Manufacturer unless State first relieves Manufacturer of its liability hereunder.
- 9.11 Inasmuch as the Supplemental Rebate(s) required by this Agreement are for Missouri Medicaid Program beneficiaries, it is agreed, in accordance with Medicaid Drug Rebate Program Release #102 For State Medicaid Directors and other applicable law, that the Supplemental Rebate(s) do not establish a new 'Best Price' for purposes of Manufacturer's CMS Agreement.
- 9.12 In the event that the Division requires prior authorization of Manufacturer's Supplemental Covered Product(s) consistent with Section 5.1, this Agreement remains in force. If, however, a Supplemental Covered Product(s) of the Manufacturer should require prior authorization and not the whole class, the Division shall notify Manufacturer and the parties agree that the affected Supplemental Covered Product (by NDC) shall be removed from this Agreement upon Manufacturer's written request. Said removal shall be retroactive to the date the affected Supplemental Covered Product (by NDC) was subjected to prior authorization if Manufacturer notifies State of its desire to have the Supplemental Covered Product(s) removed from this Agreement within thirty (30) days of Manufacturer's receipt of notice from the State.

As evidence of their Agreement to the foregoing terms and conditions the parties have signed below.

STATE OF MISSOURI, DIVISION OF MEDICAL SERVICES:

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MANUFACTURER

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## ADDENDUM A

This Addendum A dated the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, to the Missouri Supplemental Drug-Rebate Agreement Contract # \_\_\_\_\_ dated the \_\_\_\_\_ day of \_\_\_\_\_, 2004 (the "Agreement") between the Missouri ("State"), represented by the Division of Medical Services ("Division"), and \_\_\_\_\_ (Manufacturer), Labeler Code(s) \_\_\_\_\_ provides as follows:

The Supplemental Rebate Amount Per Unit for each NDC of a Supplemental Covered Product is calculated according to the following formula:

Supplemental Rebate Amount Per Unit = WAC per Unit minus CMS Unit Rebate Amount minus Net Cost Per Unit.

Where the CMS Unit Rebate Amount is as determined by CMS for the applicable quarter; and

Where the Net Cost Per Unit ("Net Cost") equals the per unit cost negotiated and agreed upon by Department and Manufacturer as set forth in the table below; and

Where the Supplemental Rebate Amount Per Unit will be greater than or equal to zero.

State and Manufacturer agree that the Manufacturer's Covered Products set forth herein are the Supplemental Covered Products that are the subject of this Agreement and that the Net Cost of each Supplemental Covered Product included in this Agreement will be as set forth in the table below:

Supplemental Covered Product (drug name)	Dosage/Package Size	Unit Type	NDC-9 or NDC-11	Net Cost Per Unit

Manufacturer warrants and agrees that this Agreement includes and encompasses all NDC's currently available for each Supplemental Covered Product. In the event an additional NDC, that is not included in this Agreement, becomes available for a Supplemental Covered Product, Manufacturer agrees that it will extend an offer to amend this Addendum A to include the new NDC(s) at Net Cost(s) that are equivalent to the Net Cost(s) of the other NDC(s) of the Supplemental Covered Product.

As evidence of their Agreement to the foregoing terms and conditions the parties have signed below.

STATE OF MISSOURI, DIVISION OF MEDICAL SERVICES:

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

MANUFACTURER

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_